

No 99.

worth than any sums of money lent him, and doing real diligence by inhibition and comprising, which incapacitates the common debtor to make any voluntary right; notwithstanding thereof, upon pretence of a personal bond, he shall be judged to have as full power to infeft when he pleases, as if he were not inhibited; and albeit the case was only as to the effect of an inhibition, yet it seems in reason that no more can be said for a comprising, they being both founded upon one principle of law, viz. to incapacitate a common debtor, by any voluntary rights, to prejudge lawful diligence.

*Fol. Dic. v. 1. p. 474. Gosford, MS. No 787. p. 494.*

1675. July 22. GORDON *against* SEATOUN and Others.

No 100.

Inhibition found not effectual to reduce infeftments following on anterior bonds, containing obligation to infeft generally or particularly.

SIR GEORGE GORDON of Haddo pursues reduction of the rights of certain lands *ex capite inhibitionis*. The defenders *allege*, That their infeftments, though posterior, yet are granted for debts anterior, containing an obligation to infeft the creditors in the debtor's lands therefor, and so the infeftments are no voluntary right, but such as the granter might have been compelled to grant. It was *answered*, *Non relevat*, unless the obligation were special to infeft in particular lands, for such a general obligation is not sufficient.

THE LORDS found the inhibition not to be effectual against infeftments for satisfaction of prior bonds, containing obligations to infeft generally or particularly.

*Fol. Dic. v. 1. p. 474. Stair, v. 2. p. 360.*

1681. June 23. GARDNER *against* BRUCE.

No 101.

Inhibition found not a sufficient ground for reduction of a posterior disposition, made in implement of a prior obligation.

PATRICK GARDNER having apprised from William Baillie of Torwood-head, all right to the lands of Torwood-head, and being infeft thereon, pursues the tenants for mails and duties. Compearance was made for Michael Bruce, who craves preference, because he was infeft in an apprising against James Lord Forrester, of all rights he had to the lands of Torwood-head; and albeit Gardner's apprising and William Baillie his author's infeftment appraised, be prior to Bruce's apprising, yet both rights flowing from James Lord Forrester, he was inhibited upon the grounds of the apprisings, before he disposed to William Baillie his brother; and he repeats his reduction *ex capite inhibitionis* of William Baillie's right, which was a wadset from the Lord Forrester, as being after his inhibition, wherewith Gardner's apprising from William Baillie falls in consequence. It was *answered* for Gardner, That inhibitions do only reduce posterior voluntary rights, but cannot reduce William Baillie's right, because it was necessary, and James Lord Forrester might have been